

lative formula, that they consider that such obscurity as there is ought to be resolved in favour of the person whose property is taken away, all the more so since the effect of the third proviso may, in such cases as the present, be of a confiscatory nature. The principle to be applied is similar to those invoked in *A.G. v. Horner*⁽¹⁾ and *David v. De Silva*.⁽²⁾

On this point therefore their Lordships reach a conclusion different from that of the Court of Appeal and in favour of the appellants.

3. This is a short point which, in their Lordships' opinion, depends upon the meaning to be given to "actual". The appellants' contention is that this means "provable" as opposed to "speculative": but this is not, their Lordships consider, the natural meaning of the word. In ordinary language a man cannot be said to be injuriously affected as to his actual earnings unless at the time of the act causing the injurious affection (viz. the acquisition) he had some earnings capable of being injuriously affected. The statute, section 33(1)(d), requires that the loss of earnings must be shown to have arisen by reason of the acquisition. In other words a business must have been in being on the land at the time of acquisition. It is moreover arguable that on the language of the paragraph the damage must be sustained "at the time of the Collector's taking possession".

But at the time of the acquisition the land was devastated and no business was being carried on there. If the appellants have suffered in their business by reason of the acquisition, it can only be a future loss. The devastation affected the appellants' actual earnings: the acquisition merely prevents the appellants from resuming business on the land at some future date when the devastation has been made good. On this view the effect of the provision would be analogous to that which applies under English law to disturbance claims. On this point their Lordships respectfully differ from the Court of Appeal.

For these reasons their Lordships allow the appeal as regards the answer to be given to the second question of law stated by the Appeals Board. The answer should be that the first proviso and the third proviso to section 33(1) of the Land Acquisition Act (before amendment in 1973) are not applicable and that the appellants are entitled to compensation accordingly. They allow the cross-appeal as regards the answer to be given to the third question of law stated by the Board. The answer should be that the appellants are not, under section 33(1)(d) of the Land Acquisition Act, entitled to compensation in respect of future, or provable, earnings. The appellants are entitled to the costs of the appeal, and the respondent to the costs of his cross-appeal.

Order accordingly.

Solicitors: *Coward Chance; Turner Peacock.*

A SINGAPORE REPORTS

TAN CHOON CHYE v. SINGAPORE SOCIETY OF ACCOUNTANTS

[C.A. (Chua, Choor Singh & Rajah JJ.) November 6, 1979]

[Singapore — Civil Appeal No. 46 of 1979]

B *Accountants — Professional misconduct — Appellant found guilty by disciplinary proceedings — Appeal to High Court dismissed — Meaning of "formal complaint" — Scope of s. 33(2) of Accountants Act (Cap. 212) — Accountants Act (Cap. 212), ss. 22(1), 32(a), 33(1), 33(2), 33(6)(a)(i) & 34(1)(b).*

Administrative Law — Disciplinary proceedings — Rules of natural justice.

G The appellant in this case was an accountant. He was charged for "grave impropriety or infamous conduct in a professional respect". The charge arose out of a letter of April 1, 1976 from the Director of Corrupt Practices Investigation Bureau to the Registrar. The appellant was alleged to have collected \$50,000 from one Lou, an industrialist, and to have given the said money as a bribe to one Wan, a Project Officer of EDB, for considering his application for registration under the Control of Manufacture Act. The said Wan had obtained bribes through the appellant from one Fong. Wan had been charged and convicted.

E The Disciplinary Committee found that the appellant had acted as an intermediary in his capacity as a practising accountant in connection with the said bribery offence in which the appellant had collected \$50,000 from one Lou and gave the money as a bribe to Wan. The appellant appealed against the decision of the Disciplinary Committee. The learned Chief Justice dismissed the appeal (see [1979] 2 M.L.J. 61) and the appellant appealed.

F **Held**, dismissing the appeal: (1) the word "formal" in the expression "formal complaint" in section 33(1) of the Accountants Act must be given its ordinary dictionary meaning of explicit and definite. The learned Chief Justice was quite correct in his view that the letter from the Director of the Corrupt Practices Investigation Bureau constituted a formal complaint within the meaning of section 33(1) of the Act;

(2) under section 33(2) of the Act the Registrar has a discretion whether to require a complaint to be supported by a statutory declaration;

G (3) the charge in the present case contained particulars which clearly met the requirements of natural justice, i.e., that a person must be given adequate notice of the case against him to afford him a fair opportunity of answering it.

CIVIL APPEAL.

K.E. Hilborne for the appellant.

Alan Wong for the respondent.

Cur. Adv. Vult.

H **Chua J.** (delivering the judgment of the Court): This appeal arises from the following charge preferred by the Disciplinary Committee of the Singapore Society of Accountants (the Society) against the appellant Tan Choon Chye, an accountant:

"The charge against you is that you acted as an intermediary in your capacity as a practising accountant in connection with a bribery offence, to wit, you collected \$50,000 from one Lou Chi Chung, an Industrialist, and gave this money as a bribe to Wan Ming Sing, a Project Officer of The Economic Development Board as a favour for showing consideration for an application for registration under the Control of Manufacture Act, thereby committing grave impropriety or infamous conduct in a professional respect in the performance of your professional duties that is discreditable to an accountant so as to render the exercise of the power of the Disciplinary Committee expedient in the interests of the public or of the Society."

The charge arose out of a letter dated April 1, 1976, from the Director of the Corrupt Practices Investigation Bureau (CPIB) to the Registrar appointed under the provisions of section 22(1) of the Accountants Act (Cap. 212) (the Act) which reads as follows:—

"Enclosed herewith is a copy of Summary of Essential Facts which is self-explanatory.

2. It would appear from the results of our investigation that the said Tan Choon Chye, an accountant of M/s Tan Choon Chye & Co. did collect \$50,000 from Lou Chih Chung, an Industrialist, and gave the money as a bribe to Wan Ming Sing, a Project Officer of EDB for considering his application for registration under the Control of Manufacture Act for the manufacture of synthetic knitted garments, knitted fabric and texturised yarn and Tan Choon Chye has admitted so in a statement made by him.

3. Wan Ming Sing also obtained bribes through Tan Choon Chye from:

- | | | |
|-----------------|---|---------|
| a) Fong Kou Hwa | — | \$5,000 |
| b) Fong Kou Hwa | — | \$1,500 |
| c) Fong Kou Hwa | — | \$2,500 |

4. Wan Ming Sing, the Project Officer of EDB, who received bribes was charged in Court No. 5 and was convicted and sentenced to 1 year's imprisonment for receiving \$50,000 and also was ordered to pay a penalty of \$50,000 in default to undergo a further 6 months' imprisonment. The other 3 charges were withdrawn.

5. Your Society may wish to take action against Tan Choon Chye who acted as the go-between for the purpose of obtaining the bribes and giving them to Wan Ming Sing.

6. I should be grateful if you would let me know result in due course."

The matter was referred to the Investigation Committee appointed under section 32(a) of the Act which after investigation recommended that the matter be referred to the Disciplinary Committee. The Disciplinary Committee decided to hold an inquiry into the matter. At the inquiry the appellant was represented by counsel. After the close of the case against the appellant he elected to call no evidence. The Disciplinary Committee found that the charge against the appellant had been proved and that he had been guilty of grave impropriety in a professional respect and ordered that the appellant's name be removed from the Register of Accountants kept under the Act and also ordered that the appellant pay the costs and expenses of and incidental to the inquiry amounting to \$5,546.

The appellant then appealed to the High Court. The appeal was heard by the learned Chief Justice who dismissed the appeal. The appellant now appeals against the decision of the learned Chief Justice.

The first point taken by Mr. Hilborne for the appellant is that there was no "formal complaint" as required by section 33(1) of the Act. Mr. Hilborne says that bearing in mind that this is a penal statute, exactitude is necessary when interpreting a penal statute. Mr. Hilborne says that when one looks at the facts in this case it cannot be said that the letter from the Director of the CPIB was a complaint let alone a "formal complaint" within the meaning of section 33(1) of the Act. Mr. Hilborne says that the letter is a mere conveyance of information by a Government Agency to the Registrar of the Society and that there is clearly no relationship of client and accountant between the CPIB and the appellant. Mr. Hil-

borne submits that since there was no such relationship between the CPIB and the appellant the letter from the CPIB does not constitute a complaint.

We are unable to accept this submission. Section 33(1) says that any person can make a complaint and the Director of the CPIB in this case made a complaint in the public interest. We agree with the learned Chief Justice that the word "formal" in the expression "formal complaint" in section 33(1) must be given its ordinary dictionary meaning of explicit and definite. The learned Chief Justice was quite correct in his view that the letter from the Director of the CPIB constitutes a formal complaint within the meaning of section 33(1).

The next point taken by Mr. Hilborne is that even if the letter of the CPIB is a complaint nevertheless it ought to have been supported by a statutory declaration under section 33(2) of the Act.

Section 33(2) provides:

"Every such complaint (other than a complaint made by a court) shall be in writing and shall be supported by such statutory declarations as the Registrar may require."

Mr. Hilborne says this section can be interpreted in two ways. First, it is entirely up to the Registrar to decide whether he wants a statutory declaration or not. Second, the word "may" means "must" and the discretion accorded thereby to the Registrar related only to the number of statutory declarations that ought to be reasonably required in support of the said complaint. He submits that the second interpretation is the correct one. He refers to section 33(6)(a)(i) which provides that "before any investigation begins in respect of any matter — (a) the Registrar shall post or deliver to the member concerned (i) copies of the written complaint (if any) and of all statutory declarations that have been made in support of the complaint." His argument is that under section 33(6)(a)(i) the Registrar is required to send to the member concerned the written complaint if there is a written complaint (there would be no written complaint if the Registrar acts on his own motion under section 33(3)) but as he must send all statutory declarations that have been made in support of the complaint to the members concerned that shows that the Registrar must under section 33(2) require a statutory declaration or statutory declarations to be made in support of the written complaint.

We are unable to accept this submission. It is clear from section 33(2) that the Registrar has a discretion whether to require a complaint to be supported by a statutory declaration. We cannot read "may" as "must".

The third point taken by Mr. Hilborne is that the charge against the appellant is bad for duplicity. The argument of Mr. Hilborne is this. The charge against the appellant is under section 34(1)(b) of the Act. This section embraces several distinct offences and the charge against the appellant ought to have disclosed which offence or offences was or were being alleged against him. In fact, says Mr. Hilborne, there are four charges rolled into one. He further submits that the ingredient "in a professional respect" in the charge has not been proved.

There is no substance in this submission. No rules of the Society have been made to regulate the procedure to be followed during a disciplinary inquiry except rule 13 of the Accountants Rules, 1977 (No. S 99 of May 6, 1977) where it is provided that "all evidence given at the hearing of any matter by the Disciplinary Committee shall be given orally; Provided that the Disciplinary Committee shall also be entitled to obtain sworn affidavits from any person if it considers them necessary for the better investigation of the matter." In our view in the absence of rules the Disciplinary Committee should conduct the inquiry in accordance with the rules of natural justice. One of the requirements of natural justice is that a person must be given adequate notice of the case against him to enable him a fair opportunity of answering it. In the present case the charge contained particulars which clearly met this requirement. It is clear from the evidence of Lou Chi Chung before the Disciplinary Committee that when the appellant applied to the Economic Development Board for a manufacturer's licence on behalf of Yoong Wah Industries (Pte) Ltd., of which Lou Chih Chung was the Chairman, the appellant was acting in his professional capacity.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Hilborne & Co.; Lee & Lee.*

THE FIRST NATIONAL BANK OF CHICAGO v. LAM THOO SANG & ORS.

[O.C.J. (Rajah J.) August 28, 1979]

[Singapore — Suit No. 2989 of 1976]

Banking Law — Guarantee — Guarantee to bank to the extent of \$1,500,000 — Whether guarantee bad for want of consideration — Bank induced to sign debenture — Sufficient consideration.

The plaintiffs in this case were bankers. They claimed against the four defendants jointly and severally for the sum of \$1,455,960.73 with interest under a guarantee of May 2, 1974. In the said guarantee the defendants jointly and severally acknowledged that the debenture dated May 2, 1974 between Alfa Electronics Pte. Ltd. (the company) and the plaintiffs was subscribed for on condition and in part consideration that they would jointly and severally give the guarantee as appearing in the guarantee and accordingly they jointly and severally guaranteed to the plaintiffs, the registered debenture holder the due payment by the company of all principal monies and interest falling under the debenture. The defendants also agreed to pay on demand if and whenever the company made default for more than seven days to the extent of \$1,500,000.

On July 26, 1976 the Company was indebted to the plaintiffs in the sum of \$1,455,960.73 which sum was due and payable by the Company to the plaintiffs under the debenture. In spite of a written demand from the plaintiffs for the said sum, the defendants failed to pay.

The first defendant admitted the signing of the guarantee but pleaded that the guarantee was "a *nudum pactum* and void" for lack of consideration. The second, third and fourth defendants did not appear.

Held, allowing the plaintiffs' claim: the guarantee and the debenture must be read together. The consideration for the said guarantee was the plaintiffs being induced to sign the debenture.

A Case referred to:-

(1) *National Bank of Nigeria Ltd. v. Awolesi* [1965] 2 LL. List L.R. 389.

CIVIL SUIT.

Foo Yew Heng for the plaintiffs.

Tay Soo Tee for the defendants.

B

Cur. Adv. Vult.

Rajah J.: The plaintiffs are bankers. Their claim against the 1st, 2nd, 3rd and 4th defendants jointly and severally was for the sum of \$1,455,960.73 with interest thereon at 9½% per annum from July 27, 1976 until payment arising under a guarantee dated May 2, 1974 (guarantee). In the guarantee the defendants jointly and severally acknowledged that the debenture dated May 2, 1974 between Alfa Electronics Private Limited (the company) and the plaintiffs (the debenture) was subscribed for on condition and in part consideration that they would jointly and severally give the guarantee as appearing in the guarantee and accordingly they jointly and severally guaranteed to the plaintiffs, the registered debenture holder the due payment by the company of all principal monies and interest falling due under the debenture and if and whenever the company made default for more than seven (7) days or otherwise provided for under the debenture in the payment of any such principal monies or interest the guarantors shall pay the amount thereof to the plaintiffs on demand to the extent of \$1,500,000.

As at July 26, 1976 the company was indebted to the plaintiffs in the sum of \$1,455,960.73 which sum was due and payable by the company to the plaintiffs under the debenture. By the plaintiffs' solicitors' letters dated August 4 and 10, 1976 respectively the plaintiffs demanded of each of the defendants payment of the said sum of \$1,455,960.73 with interest thereon at 9½% per annum. The defendants and each of them failed to make payment thereof or of any sum at all.

The first defendant although admitting the signing of the guarantee pleaded that the guarantee did not express therein the consideration for his promise and that "for want of consideration appearing on the face of the said guarantee, it stood simply as an engagement to pay the debt of another without any consideration, and was therefore, "a *nudum pactum* and void".

The second, third and fourth defendants did not appear and were not represented.

In essence what the court had to decide in the instant case was whether the guarantee was effective against the first defendant. The argument of counsel was that the guarantee on the face of it disclosed no consideration and therefore the first defendant was absolved from any liability on the said guarantee. He cited the case of *National Bank of Nigeria Ltd. v. Awolesi*⁽¹⁾ in support of his case. I do not see how this case supports his contention. In this case the Privy Council held that when the bank allowed its customer (the person guaranteed) to open a No. 2 account there was a substantial variation of the contract of guarantee, in that the bank was allowing the guarantor to be prejudiced as to his guarantee because the customer was thus able to make payment with